



Paper No. 10

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**AUG 16 2001**

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In re Application of  
Kady et al.  
Application No.09/178,837  
Filed: October 26, 1998  
Attorney Docket No. GC-334

OFFICE OF PETITIONS  
DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), filed July 23, 2001, to revive the above-identified application.

This petition is hereby **Dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR §1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. §704.

This above-identified application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office Action of December 29, 2000. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). This application became abandoned on March 29, 2001. This decision precedes the mailing of the Notice of Abandonment.

A grantable petition under 37 CFR §1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR §1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR §1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR §1.20(d)) required by 37 CFR §1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR §1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The instant petition lacks items (1). The proposed reply required for consideration of a petition to revive after a final Office Action must be a Notice of Appeal (and appeal fee required by 37 CFR §1.17(b)), an amendment that prima facie places the application in condition for allowance, the filing of a continuing application, or a Request for Continued Examination (RCE). See MPEP 711.03(c)(III)(A)(2) and 37 CFR §1.114. No

reply was submitted with the instant petition.

It is noted that while the petition states that an amendment is enclosed with the petition, the Form PTO/SB/64 filed with the petition states that the reply is the previously filed amendment. This amendment has been determined not to place the case in condition for allowance. Petitioners were so advised in the advisory action mailed on April 13, 2001. It is also noted that a search of the official file reveals that no amendment was received with the petition filed July 23, 2001.

Accordingly, this application can not be revived without a required reply.

A four (4) month extension of time was requested. However, pursuant to 37 CFR §1.136, an extension of time must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988) Petitioner's six (6) month statutory period expired on June 30, 2001. Petitioner is ineligible for any extensions of time. Accordingly, deposit account number 16-0478 will be credited with \$695.00 for fees paid to acquire an extension of time.

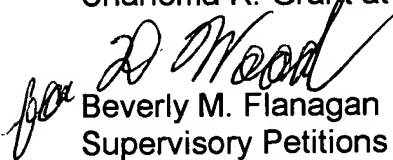
Further Correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this matter should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

  
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